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In the Supreme Court of the United States

OCTOBER TERM, 1941

JOHN C. GETZ, R. P. LYMAN, Jr. and
DANIEL W. GOODENOUGH,

Petitioners,

vs.

TOWN OF BELLEAIR, a Municipal Corporation,

Respondent.

BRIEF SUPPORTING PETITION FOR WRIT OF CERTIORARI

In support of the Petition for Certiorari heretofore filed in this Court, we submit herewith a short memorandum.

Point I.

The statement of the principle of law at the bottom of page 5 and top of page 6 of the Petition for Certiorari is copied verbatim from the opinion of this Court in *Douglass v. Pike County*, 101 U. S. 677, 25 L. ed. 968.

At the bottom of page 7, the statement is made that "this principle was first adopted in England." In support of this, we quote the following:

> "Where a decision construing a contract or a statute upon which a much used contract is founded has long been acted upon, it will be considered that subsequent contracts have been entered into subject to it, and the decision will be followed even though the court would not have come to the same conclusion in the first instance." 2 *Am. & Eng. Encycl. of Law, Vol.* 86, *p.* 182.

In a note to the foregoing statement, the following English cases are cited:

In Re Wallis, 25 Q. B. D. 176
Pandorf v. Hamilton, 17 Q. B. D. 670
Phillipps v. Rees, 24 Q. B. D. 17
Tancred v. Scotland Steel Co., 15 App. Cas. 125
Lohre v. Aitchinson, 3 Q. B. D. 558
In Re Rosher, 26 Ch. D. 821
Reg v. Edwards, 12 Q. B. D. 586

At the bottom of page 7 of the petition, it is stated that the principle "has been generally accepted by all American courts", and on pages 10 and 11, selected decisions by various State Supreme Courts are listed. We quote from 14 Am. Jur. p. 345, paragraph 130:

> "Where a constitution or statute law has received a given construction by the courts of last resort and contracts have been made and rights acquired under and in accordance with such construction, such contracts

may not be invalidated, nor vested rights acquired under them impaired, by a change of construction made by a subsequent decision."

On page 346 decisions by courts of various states are cited to support the text.

Erie Railroad v. Tompkins, 304 U. S. 64, 82 L. ed. 1188, must, therefore, be construed in the light of this long accepted principle which is the foundation of all contract and property rights. The rule that the law of the state, including the decisions of the state Supreme Court, is conclusive on the Federal Courts, must be construed as being subject to this exception.

The quotations on the bottom of page 13 and top of page 14, of the Petition are taken from the opinion of the Florida Supreme Court in the case of *Weinberger v. B. P. I.,* 93 Fla. 470, 112 So. 253, which language has been quoted and approved in *City of Ft. Myers v. State,* 95 Fla. 704, 117 So. 97. It is quoted or restated in *Roundtree v. State,* 102 Fla. 246, 135 So. 888, text 894, *Little River Bank and Trust Co. v. Johnson,* 105 Fla. 212, 141 So. 141, and in *Sparks v. Ewing,* 120 Fla. 520, 163 So. 112.

(Chap. 6868, Laws of Florida is attached hereto as Appendix A).

Point II.

It is true that the decree of the State Court rendered in 1924 holding the bonds valid was that of a Circuit Court, but since it was not appealed, that decision was final, and conclusively established the validity of the bonds. The

judgment was res judicata and the rights of the petitioners in that judgment were vested by purchase of the bonds. These rights could not be divested except by a decree of the State Court setting aside the decree of validation. A Federal Court has no power to vacate a judgment of a State Court. Petitioners were not parties to any suit to vacate the judgment of validation, hence, that judgment is still binding.

The effect of the decision of the Florida Supreme Court in *Olds v. Alvord*, 191 So. 424, was to ignore the judgment of validation. The decision of the Federal Court goes further. It holds that the decision of the State Court is conclusive and binds the Federal Courts to do likewise.

In *Coombes v. Getz*, 285 U. S. 446, 76 L. ed. 873, this Court held that

> "a contractual obligation arose and the right to enforce it, having become vested, comes within the protection of both the contract impairment clause in Article 1, Section 10, *and the due process of law clause in the 14th Amendment of the Federal Constitution.*"

In that case the holding of the Court was based upon the fact that the creditor had extended credit to the corporation, in reliance upon the stockholders liability and that

> "his action in so doing, under the state constitutional provision, brought into force for his benefit the constitutional obligation of the director".

Likewise here, the purchase of bonds in reliance upon the decree was an extension of credit by the plaintiffs to the corporation, which brought into force for their benefit the obligation of the city which had been declared to be a valid one, and vested Petitioners with a right which comes within the protection of the due process clause of the 14th Amendment.

The *Coombes* case, supra, was decided upon a writ of certiorari issued to the Supreme Court of the State of California. It was not a question of following State Court decisions, but rather a one of enforcing vested contract rights which would otherwise have been destroyed by the decision of the State Court in violation of the provisions of the 14th Amendment. See also *Brinkerhoff-Faris Trust & Savings Co. v. Hill*, 281 U. S. 673, 74 L. ed. 1107.

GILES J. PATTERSON,
Attorney for Petitioner.

ERRATA IN PETITION

The Petition, page 18, erroneously refers to *Ayres v. Carver*, 17 How. 591, 15 L. ed. 179. The reference should have been, *Brown v. Trousdale*, 138 U. S. 389, 34 L. ed. 987.

On page 3 of the petition the statement that the certificate "was authorized by Section 2, Chapter 6868," should read "by Section 5".

APPENDIX "A"

Chapter 6868, Acts of 1915

SECTION 1. (5106) *By petition in the circuit court.*— When any county, municipality, taxing district, or other political district or subdivision, desiring to incur any bonded debt or to issue certificates of indebtedness, shall hold an election for that purpose in accordance with the provisions of the laws of this State controlling and regulating such elections, and the returns of such election shall show prima facie that such election is in favor of the issuance of said bonds or certificates, or when any county, municipality, taxing district, or other political district or subdivision shall adopt any ordinance or resolution, or take any other action required by law, for incurring any bonded debt or issuing certificates of indebtedness under the laws of this State, such county, municipality, taxing district, or other political district or subdivision shall have the right, if it deems it expedient, to determine its authority to incur bonded debt or to issue certificates of indebtedness and the legality of all proceedings had or taken in connection therewith, by filing a petition against the State of Florida in the circuit court of the county in which such election has been held or other proceedings have been had or taken.

SECTION 2. (5107) *Necessary allegations of petition; order to show cause; service on State Attorney; duty of State Attorney; records to be furnished; notice to taxpayers.* The authority for incurring such bonded debt or issuing certificates of indebtedness, the fact that an election has been held and that such election was in favor of the issuance of bonds or certificates, if an election be required, the

ordinances or resolutions authorizing their issuance, and the fact of their adoption and all essential proceedings had or taken in connection therewith, the amount of the bonds or certificates to be issued, what interest they are to bear, and when and where principal and interest are to be paid, shall be briefly set out in said petition by proper allegations, references or exhibits. The judge of said court shall, on the filing and presentation of said petition, issue an order against the State of Florida requiring it, through the State Attorney in said judicial circuit to show cause at such time and place within a county in said circuit, to be designated in said order, which time shall be not less than twenty days, nor not more than thirty days, after the issuance of said order, why said bonds or certificates of indebtedness should not be validated and confirmed. A copy of said petition and order shall be served on the State attorney of the circuit in which said proceedings are pending at least eighteen days before the hearing fixed in and by said order. It shall be the duty of the State attorney to carefully examine said petition, and if it appears to him, or if he has any reason to believe that said petition is defective, insufficient or untrue, or if, in his opinion, the issuance of the bonds or certificates in question, have not been duly authorized, he shall make such defense thereto as to him shall seem proper. Any officer, agent or employee, who has charge, possession, custody or control of any of the books, papers or records of said county, municipality, taxing district or other political district or subdivision, shall, on demand of the State attorney, exhibit to him for examination said books, papers and records, and shall, without cost, furnish to him duly authenticated copies of such books, papers and records, which pertain to the proceedings for the issuance of said

bonds or certificates or which might affect the legality of the same, as he shall demand. Prior to the hearing of said cause, the clerk of said court shall publish in a newspaper published in said county, once each week for at least three weeks before the hearing, the first publication to be at least eighteen days before said hearing a notice addressed to the taxpayers and citizens of the county, municipality, taxing district, or other political district or subdivision proposing to issue such bonds or certificates, requiring them, at the time and place specified in the order providing for the hearing of said cause, to show cause, if any they have, why said bonds or certificates should not be validated and confirmed: Provided, however, that if a newspaper is published in the municipality, taxing district, or other political district or subdivision proposing to issue bonds or certificates of indebtedness, then said notice shall be published as aforesaid in a newspaper published in such municipality, taxing district, or other political district or subdivision. By the publication of said notice all taxpayers and citizens of such county, municipality, taxing district, or other political district or subdivision shall be considered as parties defendant to said proceedings, and the court shall have jurisdiction of them the same as if they were named as defendants in said petition and personally served with process.

SECTION 3. (5108) *Hearing; order; final decree; appeal.*— At the time and place designated in said order, the judge of said circuit court shall proceed to hear and determine all questions of law and of fact in said cause, and he shall make such orders as to the proceedings in said cause and adjournments as will best conserve the interest of all parties and enable him to render a final decree with the

least possible delay. Any taxpayer or citizen may become a party to said proceedings; and any party thereto, whether petitioner, defendant or intervenor, dissatisfied with the decree of the court, may appeal therefrom to the Supreme Court within fifteen days after the entry of such decree. Such appeal shall be effected by the filing and recording in the chancery order book in the office of the clerk of the circuit court of the county wherein said proceedings are pending returnable in the Supreme Court not less than fifteen days nor more than twenty days after the filing and recording of such notice of appeal. On or before the return day of said appeal the appellant shall file in the Supreme Court a certified copy of all of the said proceedings, including a transcript of all the evidence taken therein before the court. Upon application of either party, such evidence shall be duly certified by the judge who heard said cause and entered the decree appealed from.

The certified copy of all of said proceedings, as aforesaid duly filed in the Supreme Court, shall constitute the record upon which said appeal shall be heard in the Supreme Court.

Within ten days after the return day of such appeal the appellant shall file his brief in the Supreme Court and shall deliver a copy thereof to the appellee or his attorney of record, who shall within five days thereafter file his brief, and shall deliver a copy thereof to the appellant. After the time for filing brief as aforesaid has expired the Supreme Court shall proceed to consideration of said cause upon the record and briefs: Provided, however, that if either party shall file a request in writing for oral argument by the return day of such appeal, the court may enter an

order setting down said cause for oral argument for the earliest practicable date: Thereafter the Supreme Court shall give immediate consideration to said appeal and render its decision thereon in due course. Such decision shall be final after ten days and mandate shall issue forthwith, if no petition for rehearing has been filed.

Such appeal shall take priority in the Supreme Court over all other civil cases therein pending, except habeas corpus.

This section shall not affect any appeal pending June 4, 1927, but it shall apply to all such causes which have not been finally heard by the judge of the circuit court, and in which a final decree has not been entered.

SECTION 4. (5109) *Conclusiveness of decree.*— In the event no appeal is taken within the time prescribed herein, or if taken, and the decree validating said bonds or certificates is affirmed by the Supreme Court, the decree of the circuit court validating and confirming the issuance of the bonds or certificates shall be forever conclusive as to the validity of said bonds or certificates against the county, municipality, taxing district, or other political district or subdivision issuing them, and against all taxpayers and citizens thereof; and the validity of said bonds or certificates shall never be called in question in any court in this State.

SECTION 5. (5110) *Stamping bonds or certificates validated.*— Bonds or certificates, when issued under the provisions of this Article, shall have stamped or written

thereon by the proper officers of such county, municipality, taxing district or other political district or subdivision issuing the same, the words: "Validated and confirmed by decree of the circuit court" (specifying the date when such decree was rendered and the court in which it was rendered), which shall be signed by the clerk of the circuit court in which the decree was rendered, which entry shall be original evidence of said decree in any court in this State.

SECTION 6. (5111) *Costs, by whom paid.*— The costs in any case under this Article shall be paid by the county, municipality, taxing district, or other political district or subdivision issuing such bonds or certificates, except in case a taxpayer or citizen shall intervene, and in that event, the court may tax the whole or any part of such costs against the intervenor as shall be equitable and just.

SECTION 7. (5112) *Suits instituted under prior laws not affected.*— No suit instituted under any law prior to the approval of this Article shall be abated or affected by this Article, and all such suits shall proceed according to the terms of said law until they are finally determined.